

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 345
97TH GENERAL ASSEMBLY

1193H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 67, RSMo, by adding thereto eight new sections relating to broadband and wireless deployment.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 67, RSMo, is amended by adding thereto eight new sections, to be
2 known as sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5104
3 to read as follows:

67.5090. Sections 67.5090 to 67.5102 shall be known and may be cited as the
2 **"Uniform Wireless Communications Infrastructure Deployment Act"** and is intended to
3 **encourage and streamline the deployment of broadband facilities and to help ensure that**
4 **robust wireless communication services are available throughout Missouri.**

67.5092. As used in sections 67.5090 to 67.5102, the following terms mean:

2 (1) **"Accessory equipment", any equipment serving or being used in conjunction**
3 **with a wireless facility or wireless support structure. The term includes utility or**
4 **transmission equipment, power supplies, generators, batteries, cables, equipment**
5 **buildings, cabinets and storage sheds, shelters, or similar structures;**

6 (2) **"Antenna", communications equipment that transmits or receives**
7 **electromagnetic radio signals used in the provision of any type of wireless communications**
8 **services;**

9 (3) **"Applicant", any person engaged in the business of providing wireless**
10 **communications services or the wireless communications infrastructure required for**
11 **wireless communications services who submits an application;**

12 (4) **"Application", a request submitted by an applicant to an authority to construct**
13 **a new wireless support structure, for the substantial modification of a wireless support**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 structure, or for collocation of a wireless facility or replacement of a wireless facility on an
15 existing structure;

16 (5) "Authority", each state, county, and municipal governing body, board, agency,
17 office, or commission authorized by law to make legislative, quasi-judicial, or
18 administrative decisions relative to wireless facilities and wireless support structures. The
19 term shall not include state courts having jurisdiction over land use, planning, or zoning
20 decisions made by an authority;

21 (6) "Base station", a station at a specific site authorized to communicate with
22 mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power
23 supplies, and other associated electronics, and includes a structure that currently supports
24 or houses an antenna, a transceiver, coaxial cables, power supplies, or other associated
25 equipment;

26 (7) "Building permit", a permit issued by an authority prior to commencement of
27 work on the collocation of wireless facilities on an existing structure, the substantial
28 modification of a wireless support structure, or the commencement of construction of any
29 new wireless support structure, solely to ensure that the work to be performed by the
30 applicant satisfies the applicable building code;

31 (8) "Collocation", the placement or installation of a new wireless facility on existing
32 structure, including electrical transmission towers, water towers, buildings, and other
33 structures capable of structurally supporting the attachment of wireless facilities in
34 compliance with applicable codes;

35 (9) "Electrical transmission tower", an electrical transmission structure used to
36 support high voltage overhead power lines. The term shall not include any utility pole;

37 (10) "Equipment compound", an area surrounding or near a wireless support
38 structure within which are located wireless facilities;

39 (11) "Existing structure", a structure that exists at the time a request to place
40 wireless facilities on a structure is filed with an authority. The term includes any structure
41 that is capable of supporting the attachment of wireless facilities in compliance with
42 applicable building codes, including, but not limited to, towers, buildings, and water
43 towers. The term shall not include any utility pole;

44 (12) "Replacement", includes constructing a new wireless support structure of
45 equal proportions and of equal height or such other height that would not constitute a
46 substantial modification to an existing structure in order to support wireless facilities or
47 to accommodate collocation and includes the associated removal of the pre-existing wireless
48 facilities or wireless support structure;

49 **(13) "Substantial modification", the mounting of a proposed wireless facility on a**
50 **wireless support structure which:**

51 **(a) Increases the existing vertical height of the structure by:**

52 **a. More than ten percent; or**

53 **b. The height of one additional antenna array with separation from the nearest**
54 **existing antenna not to exceed twenty feet, whichever is greater; or**

55 **(b) Involves adding an appurtenance to the body of a wireless support structure that**
56 **protrudes horizontally from the edge of the wireless support structure more than twenty**
57 **feet or more than the width of the wireless support structure at the level of the**
58 **appurtenance, whichever is greater (except where necessary to shelter the antenna from**
59 **inclement weather or to connect the antenna to the tower via cable);**

60 **(c) Involves the installation of more than the standard number of new outdoor**
61 **equipment cabinets for the technology involved, not to exceed four new equipment**
62 **cabinets; or**

63 **(d) Increases the square footage of the existing equipment compound by more than**
64 **two thousand five hundred square feet;**

65 **(14) "Utility", any person, corporation, county, or other entity, or department**
66 **thereof or entity related thereto, providing retail or wholesale electric, data, cable**
67 **television, or telecommunications services;**

68 **(15) "Utility pole", a structure owned or operated by a utility that is designed**
69 **specifically for and used to carry lines, cables, or wires for telephony, cable television, or**
70 **electricity, or to provide lighting;**

71 **(16) "Water tower", a water storage tank, or a standpipe or an elevated tank**
72 **situated on a support structure, originally constructed for use as a reservoir or facility to**
73 **store or deliver water;**

74 **(17) "Wireless support structure", a structure, such as a monopole, tower, or**
75 **building capable of supporting wireless facilities. This definition does not include utility**
76 **poles;**

77 **(18) "Wireless facility", the set of equipment and network components, exclusive**
78 **of the underlying wireless support structure, including, but not limited to, antennas,**
79 **accessory equipment, transmitters, receivers, power supplies, cabling and associated**
80 **equipment necessary to provide wireless communications services.**

67.5094. In order to ensure uniformity across the state of Missouri with respect to
2 **the consideration of every application, an authority shall not:**

3 **(1) Require an applicant to submit information about, or evaluate an applicant's**
4 **business decisions with respect to its designed service, customer demand for service, or**
5 **quality of its service to or from a particular area or site;**

6 **(2) Evaluate an application based on the availability of other potential locations for**
7 **the placement of wireless support structures or wireless facilities, including without**
8 **limitation the option to collocate instead of construct a new wireless support structure or**
9 **for substantial modifications of a support structure, or vice versa;**

10 **(3) Dictate the type of wireless facilities, infrastructure or technology to be used by**
11 **the applicant, including, but not limited to, requiring an applicant to construct a**
12 **distributed antenna system in lieu of constructing a new wireless support structure;**

13 **(4) Require the removal of existing wireless support structures or wireless facilities,**
14 **wherever located, as a condition for approval of an application;**

15 **(5) With respect to radio frequency emissions, impose environmental testing,**
16 **sampling, or monitoring requirements or other compliance measures on wireless facilities**
17 **that are categorically excluded under the FCC's rules for radio frequency emissions under**
18 **47 CFR 1.1307(b)(1) or other applicable federal law, as the same may be amended or**
19 **supplemented;**

20 **(6) Establish or enforce regulations or procedures for RF signal strength or the**
21 **adequacy of service quality;**

22 **(7) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an application, in**
23 **whole or in part, based on perceived or alleged environmental effects of radio frequency**
24 **emissions;**

25 **(8) Impose any restrictions with respect to objects in navigable airspace that are**
26 **greater than or in conflict with the restrictions imposed by the Federal Aviation**
27 **Administration;**

28 **(9) Prohibit the placement of emergency power systems that comply with federal**
29 **and state environmental requirements;**

30 **(10) Charge an application fee, consulting fee, or other fee associated with the**
31 **submission, review, processing, and approval of an application that is not required for**
32 **similar types of commercial development within the authority's jurisdiction. Fees imposed**
33 **by an authority for or directly by a third-party entity providing review or technical**
34 **consultation to the authority must be based on actual, direct, and reasonable**
35 **administrative costs incurred for the review, processing, and approval of an application.**
36 **In no case should total charges and fees exceed five hundred dollars for a collocation**
37 **application or one thousand five hundred dollars for an application for a new wireless**
38 **support structure or for a substantial modification of a wireless support structure.**

39 Notwithstanding the foregoing, in no event shall an authority or any third party entity
40 include within its charges any travel expenses incurred in a third-party's review of an
41 application and in no event shall an applicant be required to pay or reimburse an authority
42 for consultation or other third-party fees based on a contingency or result-based
43 arrangement;

44 (11) Impose surety requirements, including bonds, escrow deposits, letters of credit,
45 or any other type of financial surety, to ensure that abandoned or unused facilities can be
46 removed unless the authority imposes similar requirements on other permits for other
47 types of commercial development or land uses;

48 (12) Condition the approval of an application on the applicant's agreement to
49 provide space on or near the wireless support structure for authority or local governmental
50 services at less than the market rate for space or to provide other services via the structure
51 or facilities at less than the market rate for such services;

52 (13) Limit the duration of the approval of an application;

53 (14) Discriminate or create a preference on the basis of the ownership, including
54 ownership by the authority, of any property, structure, or tower when promulgating rules
55 or procedures for siting wireless facilities or for evaluating applications;

56 (15) Impose any unreasonable requirements or obligations regarding the
57 presentation or appearance of facilities, including, but not limited to, those relating to the
58 kind or type of materials used and those relating to arranging, screening, or landscaping
59 of facilities;

60 (16) Impose any requirements that an applicant purchase, subscribe to, use, or
61 employ facilities, networks, or services owned, provided, or operated by an authority, in
62 whole or in part, or by any entity in which an authority has a competitive, economic,
63 financial, governance, or other interest;

64 (17) Condition the approval of an application on, or otherwise require, the
65 applicant's agreement to indemnify or insure the authority in connection with the
66 authority's exercise of its police power-based regulations; or

67 (18) Condition or require the approval of an application based on the applicant's
68 agreement to permit any wireless facilities provided or operated, in whole or in part, by an
69 authority or by any entity in which an authority has a competitive, economic, financial,
70 governance, or other interest, to be placed at or collocated with the applicant's wireless
71 support structure.

67.5096. 1. Authorities may continue to exercise zoning, land use, planning, and
2 permitting authority within their territorial boundaries with regard to the siting of new

3 wireless support structures, subject to the provisions of this act, including without
4 limitation section 67.5094 hereof, and subject to federal law.

5 2. Any applicant that proposes to construct a new wireless support structure within
6 the jurisdiction of any authority, planning or otherwise, that has adopted planning and
7 zoning regulations in accordance with this act shall:

8 (1) Submit the necessary copies and attachments of the application to the
9 appropriate authority; and

10 (2) Comply with applicable local ordinances concerning land use and the
11 appropriate permitting processes.

12 3. Disclosure of records in the possession or custody of authority personnel,
13 including but not limited to documents and electronic data, shall be subject to chapter 610,
14 RSMo.

15 4. The authority, within one hundred fifty calendar days of receiving an application
16 to construct a new wireless support structure or within such additional time as may be
17 mutually agreed to by an applicant and an authority, shall:

18 (1) Review the application in light of its conformity with applicable local zoning
19 regulations. An application is deemed to be complete unless the authority notifies the
20 applicant in writing, within thirty calendar days of submission of the application, of the
21 specific deficiencies in the application which, if cured, would make the application
22 complete. Upon receipt of a timely written notice that an application is deficient, an
23 applicant may take thirty calendar days from receiving such notice to cure the specific
24 deficiencies. If the applicant cures the deficiencies within thirty calendar days, the
25 application shall be reviewed and processed within one hundred fifty calendar days from
26 the initial date the application was received. If the applicant requires a period of time
27 beyond thirty calendar days to cure the specific deficiencies, the one hundred fifty calendar
28 days deadline for review shall be extended by the same period of time;

29 (2) Make its final decision to approve or disapprove the application; and

30 (3) Advise the applicant in writing of its final decision.

31 5. If the authority fails to act on an application to construct a new wireless support
32 structure within the one hundred fifty calendar days review period specified under
33 subsection 4 of this section or within such additional time as may be mutually agreed to by
34 an applicant and an authority, the application shall be deemed approved.

35 6. A party aggrieved by the final action of an authority, either by its affirmatively
36 denying an application under the provisions of this section or by its inaction, may bring an
37 action for review in any court of competent jurisdiction.

67.5098. 1. Authorities may continue to exercise zoning, land use, planning, and permitting authority within their territorial boundaries with regard to applications for substantial modifications of wireless support structures, subject to the provisions of this act, including without limitation section 67.5094, and subject to federal law.

2. Any applicant that applies for a substantial modification of a wireless support structure within the jurisdiction of any authority, planning or otherwise, that has adopted planning and zoning regulations in accordance with this title shall:

(1) Submit the necessary copies and attachments of the application to the appropriate authority; and

(2) Comply with applicable local ordinances concerning land use and the appropriate permitting processes.

3. Disclosure of records in the possession or custody of authority personnel, including but not limited to documents and electronic data, shall be subject to chapter 610, RSMo.

4. The authority, within ninety calendar days of receiving an application for a substantial modification of wireless support structures, shall:

(1) Review the application in light of its conformity with applicable local zoning regulations. An application is deemed to be complete unless the authority notifies the applicant in writing, within thirty calendar days of submission of the application, of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take thirty calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within thirty calendar days, the application shall be reviewed and processed within ninety calendar days from the initial date the application was received. If the applicant requires a period of time beyond thirty calendar days to cure the specific deficiencies, the ninety calendar days deadline for review shall be extended by the same period of time;

(2) Make its final decision to approve or disapprove the application; and

(3) Advise the applicant in writing of its final decision.

5. If the authority fails to act on an application for a substantial modification within the ninety calendar days review period specified under subsection 4 of this section, or within such additional time as may be mutually agreed to by an applicant and an authority, the application for a substantial modification shall be deemed approved.

6. A party aggrieved by the final action of an authority, either by its affirmatively denying an application under the provisions of this section or by its inaction, may bring an action for review in any court of competent jurisdiction.

67.5100. 1. Subject to the provisions of this act, including section 67.5094, collocation applications and applications for replacement of wireless facilities shall be reviewed for conformance with applicable building permit requirements, but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review.

2. The authority, within forty-five calendar days of receiving a collocation application, shall:

(1) Review the collocation application or application to replace wireless facilities in light of its conformity with applicable building permit requirements and consistency with this act. A collocation application or application to replace wireless facilities is deemed to be complete unless the authority notifies the applicant in writing, within fifteen calendar days of submission of the application, of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that a collocation application or application to replace wireless facilities is deficient, an applicant may take fifteen calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within fifteen calendar days, the application shall be reviewed and processed within forty-five calendar days from the initial date the application was received. If the applicant requires a period of time beyond fifteen calendar days to cure the specific deficiencies, the forty-five calendar days deadline for review shall be extended by the same period of time;

(2) Make its final decision to approve or disapprove the collocation application or application for replacement of wireless facilities; and

(3) Advise the applicant in writing of its final decision.

3. If the authority fails to act on a collocation application or application to replace wireless facilities within the forty-five calendar days review period specified in subsection 2 of this section, the application shall be deemed approved.

4. This act shall not:

(a) Authorize an authority, except when acting solely in its capacity as a utility, to mandate, require, or regulate the placement, modification, or collocation of any new wireless facility on new, existing, or replacement poles owned or operated by a utility; or

(b) Expand the power of an authority to regulate any utility.

5. A party aggrieved by the final action of an authority, either by its affirmatively denying an application under the provisions of this section or by its inaction, may bring an action for review in any court of competent jurisdiction.

67.5102. In accordance with the policies of this state to further the deployment of wireless communications infrastructure:

3 **(1) An authority may not institute any moratorium on the permitting, construction,**
4 **or issuance of approval of new wireless support structures, substantial modifications of**
5 **wireless support structures, or collocations.**

6 **(2) To encourage applicants to request construction of new wireless support**
7 **structures on public lands and to increase local revenues:**

8 **(a) An authority may not charge a wireless service provider or wireless**
9 **infrastructure provider any rental, license, or other fee to locate a wireless support**
10 **structure on an authority's property in excess of the current market rates for rental or use**
11 **of similarly situated property. If the applicant and the authority do not agree on the**
12 **applicable market rate for any such public land and cannot agree on a process by which**
13 **to derive the applicable market rate for any such public land, then the market rate will be**
14 **determined by a panel of three certified appraisers, using the following process. Each party**
15 **will appoint one certified appraiser to the panel, and the two certified appraisers so**
16 **appointed will appoint a third certified appraiser. Each appraiser will independently**
17 **appraise the appropriate lease rate, and the market rate shall be set at the mid-point**
18 **between the highest and lowest market rates among the three independent appraisals,**
19 **provided the mid-point between the highest and lowest appraisals is greater than or less**
20 **than ten percent of the appraisal of the third appraiser chosen by the parties' appointed**
21 **appraisers. In such case, the third appraisal will determine the rate for the lease. The**
22 **appraisal process shall be concluded within one hundred fifty calendar days from the date**
23 **the applicant first tenders its proposed lease rate to the authority. Each party will bear the**
24 **cost of its own appointed appraiser, and the parties shall share equally the cost of the third**
25 **appraiser chosen by the two appointed appraisers. Nothing in this paragraph shall bar an**
26 **applicant and an authority from agreeing to reasonable, periodic reviews and adjustments**
27 **of current market rates during the term of a lease or contract to use an authority's**
28 **property; and**

29 **(b) An authority may not offer a lease or contract to use public lands to locate a**
30 **wireless support structure on an authority's property that is less than fifteen years in**
31 **duration.**

32 **(3) Nothing in subsection 2 of this section is intended to limit an authority's lawful**
33 **exercise of zoning, land use, or planning and permitting authority with respect to**
34 **applications for new wireless support structures on an authority's property under**
35 **subsection 1 of section 67.5096.**

67.5104. Any pole attachment rates, terms, and conditions demanded by a
2 **municipal utility pole owner or controlling authority of a municipality shall be just and**
3 **reasonable. An annual pole attachment rental rate shall be considered just and reasonable**

4 if it does not exceed a rate calculated in accordance with the federal cable rate formula,
5 found at 47 U.S.C. Section 224(d), as applied by the Federal Communications Commission.
6 As used in this section, “pole attachment” means any attachment by a video service
7 provider to a pole. A video service provider may seek review of any rate, term, or
8 condition under this section at the appropriate district court.

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